

REMARKS

Summary of Office Action

Claims 1, 3-29, and 41-65 are pending in the application.

Claims 1, 11, 15, 19, 20, 24, 25, 41, 44, 53, and 59-62 were rejected under 35 U.S.C. § 102(b) as being anticipated by Olson U.S. Patent No. 5,303,487 (hereinafter "Olson").

Claims 3, 42,, 43 and 54 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Olson.

Claims 4-7, 12, 13, 25-29, 45-48, 55-57, 63, and 64 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Olson in view of Hirsch U.S. Patent No. 6,484,425 (hereinafter "Hirsch").

Claim 23 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Olson in view of Gregory-Gillman U.S. Patent No. 6,151,823 (hereinafter "Gregory-Gillman").

Summary of Applicants' Amendments

Applicant has amended claims 1, 34, 41, 45-51, and 53 without prejudice and solely in order to expedite prosecution.

Applicants respectfully traverse the Examiner's rejections. Applicants reserve the right to claim any subject matter lost by any amendment or cancellation in one or more continuation or divisional applications.

Applicant's Response to the Rejections Under 35 U.S.C. 102(b)

Claims 1, 11, 15, 19, 20, 24, 25, 41, 44, 53, and 59-62 were rejected under 35 U.S.C. § 102(b) as being

anticipated by Olson U.S. Patent No. 5,303,487 (hereinafter "Olson").

Claims 1

Applicant's claim 1 includes an image on the second containment portion and a substance operable to move about said image.

None of the references, used either alone or in combination, shows or suggests applicants invention as defined by applicants amended claim 1.

Olson, for example, includes an item of display. The item of display blocks a user from viewing anything located on, for example, backing section 32. In fact, Olson does not show or suggest an image located about said window display other than the item of display. Accordingly, Olson does not show or suggest applicant's invention of claim 1 of an image on a second containment portion and a substance operable to move about the image.

In light of the foregoing, applicants respectfully request that the Examiner's rejections of claim 1, and any claims dependent therefrom, be withdrawn.

Claim 24

Applicants invention of amended claim 24 includes an image provided on a special effects container and a substance that is operable to move about said image.

None of the references, used either alone or in combination, shows or suggests applicants invention of amended claim 24. For example, as shown above in connection with applicant's arguments for the patentability of claim 1, Olsen does not show or suggest both an image or a substance - let alone a substance that is operable to move about the image.

In light of the foregoing, applicants respectfully request that the Examiner's rejections of claim 24, and any claims dependent therefrom, be withdrawn.

Claims 41

Applicants invention of amended claim 24 includes an image located on said first sheet segment, wherein the image is viewable through said aperture. A substance is provided in a container between the image and the transparent sheet.

None of the references, used either alone or in combination, shows or suggests applicants invention of amended claim 41. For example, as shown above in connection with applicant's arguments for the patentability of claim 1, Olsen does not show or suggest both an image and a substance - let alone a substance that is located between an image and a transparent sheet where the image is viewable through the sheet.

In light of the foregoing, applicants respectfully request that the Examiner's rejections of claim 41, and any claims dependent therefrom, be withdrawn.

Claim 53

Applicants invention of amended claim 53 includes an image that is viewable through an aperture and a substance in a special effects container that is operable to move about said image.

None of the references, used either alone or in combination, shows or suggests applicants invention of amended claim 53. For example, as shown above in connection with applicant's arguments for the patentability of claim 1, Olsen does not show or suggest a substance and

an image - let alone a substance that is operable to move about an image.

In light of the foregoing, applicants respectfully request that the Examiner's rejections of claim 53, and any claims dependent therefrom, be withdrawn.

Applicant's Response to the Rejections Under 35 U.S.C. 103(a)

Claims 4-7, 12, 13, 25-29, 45-48, 55-57, 63, and 64 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Olson in view of Hirsch.

Hirsch cannot be combined with Olson in any way, shape, or form. Hirsch does not even show or suggest a greeting card - let alone one having any structure similar to Olsen. Any combination between the Olsen and Hirsch would in hindsight and would eviscerate the spirit of both the Olsen and Hirsch devices only to form an inoperable device.

Additionally, as shown above, independent claims 1, 24, 41, and 53 are patentable. Claims 4-7, 12, 13, 25-29, 45-48, 55-57, 63, and 64 depend from either claim 1, 24, 41 or 53. Accordingly, applicant respectfully submits that claims 4-7, 12, 13, 25-29, 45-48, 55-57, 63, and 64 are patentable for depending from a patentable claim.

Applicant's Response to the Remaining Rejections Under 35 U.S.C. 103(a)

Claims 3, 42, 43 and 54 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Olson.

Claim 23 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Olson in view of Gregory-Gillman U.S. Patent No. 6,151,823 (hereinafter "Gregory-Gillman").

As shown above, independent claims 1, 24, 41, and 53 are patentable. Claims 3, 23, 42, 43 and 54 depend from either claim 1, 24, 41, or 53 and, as such, are patentable for depending from a patentable independent claim.

Applicant's Reply to Any Rejection Based On Official Notice

The Examiner appears to have rejected claims in view of Official Notice (e.g., claims 3, 42, 43, and 54). For rejections under 35 U.S.C. § 103(a), the Examiner has the burden of showing each and every element of applicant's invention in the prior art combination. If the Examiner is taking Official Notice, MPEP § 2144.03 requires that the facts of which notice are being taken be capable of instant and unquestionable demonstration as being well known in the art. See *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). Applicant believes that the "facts" of which the Examiner may have taken Official Notice do not meet that standard, and invoke his right under MPEP § 2144.03 to have the Examiner provide documentary proof that those facts are actually well known.

The Examiner "cannot simply reach conclusions based on its own understanding or experience - or on its assessment of what would be basic knowledge or common sense. Rather, ... [the Examiner] ... must point to some concrete evidence in the record in support of these findings." *In re Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 (Fed. Cir. 2001). If the Examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth factual statements and explanation to such a finding. See MPEP 2144.03(c).

Conclusion

Applicants respectfully submit that this application, including the pending claims, is in condition for allowance. Reconsideration and prompt allowance of this application are respectfully requested.

The Director is hereby authorized to charge the three-month extension of time fee, or charge any other fees associated with this filing, or credit any overpayment of the same, to Deposit Account No. 06-1075.

Respectfully Submitted,

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